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STATUTORY INSTRUMENTS

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**2019 No. 560**

**The Public Procurement (Amendment  
etc.) (EU Exit) Regulations 2019**

**PART 3**

**AMENDMENT OF SECONDARY LEGISLATION**

**CHAPTER 3**

**THE UTILITIES CONTRACTS REGULATIONS 2016**

**Amendments commenced on exit day**

**9.—**(1) The Utilities Contracts Regulations 2016(1) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “the Commission”;

(b) after the definition of “contracting authorities” insert—

““covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—

(a) applies to that activity, element, part or procurement, or

(b) would do so if these Regulations applied;”;

(c) after the definition of “design contests” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;

(d) omit the definition of “EU Publications Office”;

(e) in the definition of “GPA”, after “amended” insert “before exit day”;

(f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart.”;

(g) after the definition of “qualified certificate for electronic signature” insert—

““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;

(h) omit the definition of “the Treaties”;

- (i) before the definition of “Utilities Contracts Directive” insert—
- ““the UK e-notification service” has the meaning mentioned in regulation 71(6), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 71(6);”.
- (3) In regulation 3 (subject-matter and scope), for paragraph (2) substitute—
- “(2) Parts 1 to 4—
- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (2A) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (2C), those included in the 1958 List.
- (2B) Subject to the effect of any regulations made under paragraph (2C), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (2C) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of Parts 1 to 4 as if it were changed in respects specified in the regulations.
- (2D) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.
- (4) In regulation 6 (mixed procurement covering the same activity), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 7 (procurement covering several activities), in paragraph (4), for “Article 346 of TFEU” substitute “covered by regulation 3(2)”.
- (6) In regulation 16 (threshold amounts)—
- (a) in paragraph (1)(a), for “the sum specified in Article 15(a) of the Utilities Contracts Directive” substitute “£363,424”;
- (b) in paragraph (1)(b), for “the sum specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,551,413”;
- (c) in paragraph (1)(c), for “the sum specified in Article 15(c) of the Utilities Contracts Directive” substitute “£820,370”;
- (d) omit paragraphs (3) and (4).
- (7) After regulation 16 insert—

**“Review and amendment of certain thresholds**

**16A.**—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 16(1)(a) and (b) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

- (3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.
- (4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 16(1) in respect of that threshold, the Minister must make regulations amending regulation 16(1) so as to substitute for that sum the sum equal to that value.
- (5) Such regulations—
- (a) must be made and laid before Parliament before 1st November following the end of the 24 month period covered by the review; and
  - (b) must provide for the substitution to come into force on the following 1st January.
- (6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.
- (8) In regulation 17 (methods for calculating the estimated value of the procurement)—
- (a) in paragraph (7), for “sent” substitute “submitted”;
  - (b) in paragraph (14)—
    - (i) in sub-paragraph (a), for “EUR 80,000” substitute “£65,630”;
    - (ii) in sub-paragraph (b), for “EUR 1 million” substitute “£820,370”.
- (9) In regulation 18 (contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).
- (10) In regulation 19 (contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country)—
- (a) in the heading, for “in a third country” substitute “outside the United Kingdom”;
  - (b) in paragraph (1)(b)—
    - (i) for “in a third country” substitute “outside the United Kingdom”;
    - (ii) for “EU” substitute “United Kingdom”;
  - (c) omit paragraph (2).
- (11) In regulation 20 (contracts awarded and design contests organised pursuant to international rules), in paragraph (1)(a)—
- (a) before “Treaties” insert “Retained”;
  - (b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.
- (12) In regulation 21 (specific exclusions for service contracts), in paragraph (1)(c)—
- (a) in paragraph (i)—
    - (i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
    - (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
  - (b) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”.
- (13) In regulation 22 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before exit day in giving rise to any of the powers, rights etc mentioned in that section”.

- (14) In regulation 24 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (15) In regulation 25 (mixed procurement covering the same activity and involving defence or security aspects)—
- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (16) In regulation 26 (procurement covering several activities and involving defence or security aspects), in paragraphs (5)(b) and (7), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (17) In regulation 27 (contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State” substitute “the United Kingdom”;
    - (iii) for “third” substitute “other”;
  - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (18) In regulation 28 (contracts between contracting authorities), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (19) In regulation 29 (contracts awarded to an affiliated undertaking), in paragraph (5)—
- (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (20) Omit regulation 31 (notification of information).
- (21) In regulation 33 (contracts subject to special arrangements)—
- (a) in paragraph (b), for the words from “EUR” in the words before sub-paragraph (i) to the end of sub-paragraph (xiii) substitute “£4,101,850, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)”;
  - (b) in paragraph (c)—
    - (i) in the words before sub-paragraph (i)—
      - (aa) for “400,000 euro” substitute “£328,150”;
      - (bb) for “5,000,000 euro” substitute “£4,101,850”;
    - (ii) in sub-paragraph (i), for the words from “the information “ to the end substitute “, for not less than 4 years from the date on which the contract is awarded, the information that would have been required to be included in a contract award notice if paragraph (b) had applied”;
    - (iii) in sub-paragraph (ii)—
      - (aa) omit “, either”;
      - (bb) for the words from “Commission” to the end substitute “Minister for the Cabinet Office”.
- (22) In regulation 34 (activities directly exposed to competition), in paragraph (2), omit sub-paragraph (b) and the preceding “or”.
- (23) Omit regulation 35 (procedure for establishing whether regulation 34(2)(b) is applicable).

- (24) In regulation 37 (economic operators), omit paragraph (1).
- (25) In regulation 38 (reserved contracts), in paragraph (2), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.
- (26) In regulation 40 (rules applicable to communication)—
  - (a) in paragraph (15)(a)(i)—
    - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
    - (ii) for “sent” substitute “submitted”;
  - (b) in paragraph (20), in the words after sub-paragraph (b), for the words from “Utilities” to the end substitute “these Regulations”.
- (27) After regulation 40 insert—

#### **“Powers to amend regulation 40**

##### *Exceptions to obligation to require use of electronic means of communication*

###### *Exceptions to obligation to require use of electronic means of communication*

**40A.**—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 40 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
- (b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 40.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 40 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

###### *Requirements relating to tools and devices for electronic receipt of documents*

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 40(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

- (28) In regulation 43 (conditions relating to the GPA and other international agreements)—
  - (a) in the heading, omit “and other international agreements”;
  - (b) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
    - (i) omit “and by the other international agreements by which the EU is bound”;
    - (ii) for “those agreements” substitute “the GPA”;
    - (iii) for “of the EU” substitute “of the United Kingdom”;
  - (c) after that paragraph insert—

- “(2) For the purposes of paragraph (1)—
- (a) each country that was a member State immediately before exit day is deemed to be a signatory to the GPA; and
  - (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
    - (i) paragraph 2(a) of Annex 1;
    - (ii) Annex 6.”.
- (29) In regulation 44 (choice of procedures), in paragraph (2), omit “and the Utilities Contracts Directive”.
- (30) In regulation 45 (open procedure)—
- (a) in paragraph (2), for “sent” substitute “submitted”;
  - (b) in paragraph (4)—
    - (i) in sub-paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” substitute “regulation 67(2) and (5)(c)”;
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
  - (c) in paragraph (5), for “sent” substitute “submitted”.
- (31) In regulation 46 (restricted procedure), in paragraph (2)(a), for “sent” substitute “submitted”.
- (32) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2)(a), for “sent” substitute “submitted”.
- (33) In regulation 48 (competitive dialogue), in paragraph (2)(a), for “sent” substitute “submitted”.
- (34) In regulation 49 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (35) In regulation 52 (dynamic purchasing systems)—
- (a) in paragraph (9)(a), for “sent” substitute “submitted”;
  - (b) for paragraph (29) substitute the following—
    - “(29) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.
    - (29A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (28) or (29), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 70.”.
- (36) Omit regulation 57 (procurement involving utilities from other member States).
- (37) In regulation 60 (technical specifications)—
- (a) in paragraph (8), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
  - (b) in paragraph (10), omit “to the extent that they are compatible with EU law,”.
- (38) In regulation 67 (periodic indicative notices)—
- (a) in paragraph (2), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice to the UK e-notification service for the purposes of these Regulations;

- (b) in paragraph (3)(a), for “send” substitute “submit”;
- (c) in paragraph (4)—
  - (i) for “send” substitute “submit”;
  - (ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a references to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
- (d) in paragraph (5)—
  - (i) in sub-paragraph (c)—
    - (aa) for “set out section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”;
    - (bb) after “II of Part A” insert—
      - “of Annex 6 to the Utilities Contracts Directive, but as if—
        - (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations”; and
        - (ii) in paragraph 21—
          - (aa) “Article 82” were a reference to regulation 82 of these Regulations; and
          - (bb) “point (b) of Article 67(2)” were a reference to regulation 67(5)(b) of these Regulations”;
    - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (39) In regulation 68 (notices on the existence of a qualification system)—
  - (a) in paragraph (1), omit the words from “which” to “Directive.”;
  - (b) after paragraph (1) insert—
    - “(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 82 of these Regulations.”;
  - (c) in paragraph (3)—
    - (i) in the words before sub-paragraph (a)—
      - (aa) for “notify the EU Publications Office” substitute “give notice”;
      - (bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;
    - (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.
- (40) For regulation 69 (contract notices) substitute—

**“Contract notices**

- 69.**—(1) Contract notices shall contain the information set out in the relevant part of Annex 11 to the Utilities Contracts Directive, but as if—
- (a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations;
  - (b) in—
    - (i) paragraph 19 of Part A,
    - (ii) paragraph 16 of Part B, and
    - (iii) paragraph 15 of part C,

“Article 82” were a reference to regulation 82 of these Regulations;

(c) in—

- (i) paragraph 20 of Part A,
- (ii) paragraph 18 of Part B, and
- (iii) paragraph 18 of part C,

“in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”; and

(d) in—

- (i) paragraph 22 of Part A,
- (ii) paragraph 20 of Part B, and
- (iii) paragraph 20 of Part C,

“date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

(2) Such notices shall be submitted for publication in accordance with regulation 71.”.

(41) In regulation 70 (contract award notices)—

- (a) in paragraph (1), for “send” substitute “submit”;
- (b) for paragraph (2) substitute—

“(2) Such notices shall—

(a) contain the information set out in Annex 12 to the Utilities Contracts Directive, but as if—

- (i) in paragraph 5(b), “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
- (ii) in paragraph 5(c), “Article 50” were a reference to regulation 50(1) of these Regulations;
- (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 50(1)(h) of these Regulations;
- (iv) in paragraph 17, the words in brackets were omitted;
- (v) in paragraph 19, “Article 64(1)” were a reference to regulation 64(1) of these Regulations;
- (vi) in paragraph 20, “Article 84” were a reference to regulation 84 of these Regulations; and
- (vii) in paragraph 21, “date of transmission” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and

(b) be sent for publication in accordance with regulation 71.”;

(c) in paragraphs (4) and (5)(a) and (b), for “send” substitute “submit”.

(42) In regulation 71 (form and manner of sending notices for publication at EU level)—

- (a) for the heading substitute “Publication on the UK e-notification service”;
- (b) in paragraph (1)—

- (i) after “regulations” insert “52,”;
- (ii) for “sent” (in both places) substitute “submitted”;



- (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;
  - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
  - (d) in paragraph (3)—
    - (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
    - (ii) omit “the receipt of the notice and of”;
  - (e) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
    - (iii) omit the words from “, provided” to the end;
  - (f) omit paragraph (5);
  - (g) at the end insert—

“(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (3) of this regulation.”.
- (43) In regulation 72 (publication at national level)—
- (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
  - (b) in paragraph (1)—
    - (i) after “regulations” insert “52,”;
    - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
  - (c) in paragraph (3)—
    - (i) after “regulations” insert “52,”;
    - (ii) from the words from “at the national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service.”;
  - (d) in paragraph (4)—
    - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
    - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
  - (e) in paragraph (5)—
    - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
    - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
    - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
  - (f) in paragraph (6)—
    - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
    - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

- (44) In regulation 73 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (45) In regulation 76 (general principles), in paragraph (6)—
- (a) omit “EU law,”;
  - (b) after “agreements or” insert “, subject to paragraphs (6A) and (6B)”;
  - (c) after paragraph (6) insert—
    - “(6A) Where—
      - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
      - (b) the agreement is not already listed,
 the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it the agreement were listed.
    - (6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it the agreement were not listed.
    - (6C) In paragraphs (6A) and (6B)—
      - (a) “listed” means listed as described in paragraph (6), and
      - (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (46) In regulation 81 (quality assurance standards and environmental management standards)—
- (a) omit paragraph (2);
  - (b) in paragraph (4)—
    - (i) omit sub-paragraphs (a) and (b);
    - (ii) in sub-paragraph (c), omit “other”;
    - (iii) omit the words after sub-paragraph (c).
- (47) In regulation 83 (life-cycle costing)—
- (a) in paragraph (3)(c)—
    - (i) omit ‘third’;
    - (ii) omit the words from “or other” to the end;
  - (b) omit paragraphs (5) and (6).
- (48) In regulation 84 (abnormally low tenders)—
- (a) in paragraph (2), omit sub-paragraph (f);
  - (b) omit paragraphs (6) and (7).
- (49) In regulation 85 (tenders comprising products originating in third countries), in paragraph (2) (a), for the words from “in accordance” to “time to time” substitute “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018(2) if the products were chargeable goods within the meaning of that Part”.
- (50) In regulation 87 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (51) In regulation 88 (modification of contracts during their term)—
- (a) in paragraph (2), for “send” substitute “submit”;

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(2) 2018 c. 22. See section 17 (place of origin of chargeable goods).

- (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.
- (52) In regulation 89 (termination of contracts), in paragraph (1), omit sub-paragraph (c).
- (53) In regulation 91 (publication of notices)—
  - (a) in paragraph (4), for “send” substitute “submit”;
  - (b) in paragraph (5), after “Directive” insert “, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
  - (c) in paragraph (6), for “send” substitute “submit”.
- (54) In regulation 93 (reserved contracts for certain services), in paragraph (5), for “Article 94 of the Utilities Contracts Directive” substitute “this regulation”.
- (55) In regulation 95 (notices)—
  - (a) in paragraph (2)—
    - (i) in sub-paragraph (a), after “Directive” insert “, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
    - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
  - (b) in paragraph (3), in the words before sub-paragraph (a), for “sent” substitute “submitted”;
  - (c) in paragraph (4), after “Directive” insert “, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”.
- (56) In regulation 96 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).
- (57) In regulation 98 (retention of contract copies)—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”;
    - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”;
  - (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.
- (58) In regulation 99 (information and documentation requirements)—
  - (a) in paragraph (3), after “regulation” insert “33(b),”;
  - (b) for paragraph (7) substitute—
    - “(7) A utility shall communicate the report, or its main elements—
      - (a) to the Minister for the Cabinet Office if the Minister so requests;
      - (b) where the utility is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a));
      - (c) where the utility is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a)).”;
  - (c) omit paragraph (8);
  - (d) omit paragraph (9) and the italic heading preceding it.

- (59) In regulation 104 (duty owed to economic operators from EEA States)—
- (a) in the heading, for “EEA States” substitute “the United Kingdom and Gibraltar”;
  - (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
  - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (60) In regulation 105 (duty owed to economic operators from certain other States)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”;
      - (bb) for “the GPA” substitute “Condition 1 or Condition 2”;
    - (ii) omit sub-paragraph (b) and the preceding “and”;
  - (b) for paragraph (2) substitute—
    - “(2) Condition 1 is that—
      - (a) at the relevant time the economic operator is from a GPA state;
      - (b) the procurement may result in the award of a contract of any description; and
      - (c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.
    - (2A) Condition 2 is that—
      - (a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom;
      - (b) the procurement may result in the award of a contract of any description; and
      - (c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
  - (c) omit paragraph (3);
  - (d) in paragraph (4)—
    - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
    - (ii) in the definition of “relevant time”—
      - (aa) for “sent” (in both places) substitute “submitted”;
      - (bb) for “EU Publications Office” (in both places) substitute “UK e-notification service”;
      - (cc) for “sending” substitute “submitting”.
- (61) In regulation 108 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (62) In regulation 114 (grounds for ineffectiveness)—
- (a) in paragraphs (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
  - (b) in paragraph (4)—
    - (i) in the words before sub-paragraph (a), omit the words from “is in” to “and which”;
    - (ii) in sub-paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service”.
- (63) After regulation 119 insert—

## “PART 5A

### AMENDING THESE REGULATIONS

#### **General provisions about regulations under these Regulations**

**119A.**—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 3(2C) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 40A or 76 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 40A or 76 without such consent, but in such cases the amending regulations must amend regulation 40 or, as the case may be, make provision under regulation 76, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 40A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 40 (so that, for example, different paragraphs apply to devolved Welsh authorities and other utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 40A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.